

# In from the margins: survivors of wartime sexual violence in Croatia and an early analysis of the new law

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DOI:  
[10.1093/jhuman/huv022](https://doi.org/10.1093/jhuman/huv022)

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Document Version  
Peer reviewed version

Citation for published version (Harvard):  
Clark, J 2016, 'In from the margins: survivors of wartime sexual violence in Croatia and an early analysis of the new law', *Journal of Human Rights Practice*. <https://doi.org/10.1093/jhuman/huv022>

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Checked March 2016

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**In from the Margins:  
Survivors of Wartime Sexual Violence in Croatia and an Early Analysis of the New Law**

‘Broken bodies, torn lives, spoiled identities, ruined families, trauma, isolation, material destitution, and – in some cases – death are all too common legacies of armed conflict for thousands of victims of sexual and reproductive violence worldwide’ (Rubio-Marín 2012: 70).

## **Introduction**

Croatia is best known for its breath-taking scenery and stunning Adriatic coastline. Discordant with such beauty, an ugly war engulfed the country between 1991 and 1995. While prominent reminders of the conflict remain – from scarred buildings to war memorials and disabled veterans with missing limbs – a far less visible legacy of the war are the women and men who suffered rape and other forms of sexual violence. The widespread use of rape during the 1992-1995 war in neighbouring Bosnia-Herzegovina (BiH) overshadowed similar crimes being committed in Croatia. This, combined with the fact that successive governments in Croatia have primarily focused on the needs of war veterans (Clark 2013a),<sup>1</sup> has meant that survivors of wartime rape and sexual violence have received little attention or care. On 29 May 2015, however, the Croatian government – led by the Social Democrats – passed the Law on the Rights of Victims of Sexual Violence during the Armed Aggression against the Republic of Croatia in the Homeland War<sup>2</sup> (henceforth referred to as the new Law), which provides, inter alia, for the payment of compensation<sup>3</sup> to survivors of such violence. According to

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<sup>1</sup> According to the head of Documenta, a non-governmental organization based in Zagreb, ‘When it comes to the war of the 1990s, there is hardly anything to be discussed other than war veterans. They were actors during the war, but it is not clear where rape victims fit in in terms of their importance’ (Teršelić 2015).

<sup>2</sup> The Republic of Croatia officially refers to the war on its territory as the ‘Homeland War’ (*Domovinski rat*), to emphasize that Croatia was a victim of external aggression from neighbouring Serbia.

<sup>3</sup> According to the 2005 United Nations (UN) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, ‘*Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

(a) Physical or mental harm;

Satz, ‘Given how difficult it can often be, even in simple cases, to repair a hurt, we should not be surprised that those who offer compensation sometimes get it wrong’ (2007: 191). While it is of course far too early to assess whether the Croatian government has ‘got it wrong’ and to know how the new Law will work in practice, the very fact that the Law has been adopted represents a significant step forward in terms of acknowledging survivors of wartime rape and sexual violence and their multiple needs. For too long, these individuals have felt alone and neglected. In the words of one survivor, ‘The question of why it all happened remains, why doesn’t anyone talk about it, and why we, who survived it all, have not received any material or moral satisfaction’ (cited in Slišković 2011: 85).

The initiative for the new Law, a *lex specialis*,<sup>4</sup> came from the Croatian Ministry of Veterans’ Affairs. As part of the research for this article, the author travelled to Zagreb in June 2015 and interviewed the Minister of Veterans’ Affairs, Mr Predrag Matić, and the Assistant Minister of Veterans’ Affairs, Mr Bojan Glavašević. The latter headed the Working Group that drafted the new Law. The author also interviewed two further members of the Working Group – a feminist human rights activist and a psychologist-psychotherapist – as well as the head of Documenta, an NGO that has long campaigned for the rights of survivors of war-related rape and sexual violence. Between August and October 2015, the author additionally interviewed Croatia’s Deputy Minister of Veterans’ Affairs, Ms Vesna Nad, who took over from Assistant Minister Glavašević as the head of the aforementioned Working Group; an NGO leader who was also part of the Working Group; a Croatian war veteran who suffered sexual violence during the Homeland War,<sup>5</sup> a Serb woman who was raped by a Croatian soldier during the war and a Bosnian Croat woman who was raped during the Bosnian war. The research for this article

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- (b) Lost opportunities, including employment, education and social benefits;
  - (c) Material damages and loss of earnings, including loss of earning potential;
  - (d) Moral damage;
  - (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services’ (UN 2005: Article 20).

<sup>4</sup> A *lex specialis* is a law which governs a specific subject matter and takes precedence over laws governing general matters.

<sup>5</sup> This interview was by email.

was conducted as part of a Leverhulme Research Fellowship focused on the long-term consequences of wartime rape and sexual violence in BiH. Between October 2014 and September 2015, the author conducted 79 semi-structured interviews with Bosnian Muslim, Bosnian Serb and Bosnian Croat survivors throughout BiH, and this article will draw on that fieldwork where appropriate.<sup>6</sup>

Divided into three sections, the article's first section will explore the content of the new Law, identifying its core elements. The second section will perform a detailed and early analysis of the Law, focusing on both its strengths and its more problematic elements. The third section will offer some final reflections and suggest future avenues of research relating to the Law's implementation. Two important points regarding terminology must be underlined. Firstly, while rape and sexual violence are distinct terms in international law, this article henceforth uses the term sexual violence to include rape. This is consistent with the definition of sexual violence contained in the new Law. Secondly, while the new Law employs the terminology of 'victim', this article deliberately utilizes the term 'survivor'. The latter is a more empowering term, and for this reason it is often more acceptable to individuals who have experienced sexual violence.<sup>7</sup>

## **An overview of the new law**

### ***Background to the law***

Rape became a symbol of the Bosnian war. The use of sexual violence during the war in Croatia, in contrast, received far less attention, and few scholars have written on the subject (see, however, Olujić 1998; Oosterhoff, Zwanikken and Ketting 2004; Lončar, Henigsberg and Hrabar 2010). The most comprehensive research on the topic is contained in a 2013 report by the United Nations Development Programme (UNDP) in Croatia entitled *Assessment of the Number of Sexual Violence*

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<sup>6</sup> The main results of this fieldwork will be presented in a research monograph entitled *Rape, Sexual Violence and the Bosnian War: An Analysis of Long-Term Needs and Transitional Justice Challenges*. This monograph, is currently in progress.

<sup>7</sup> According to research by Medica Zenica and Medica Mondiale with 51 women who suffered sexual violence during the Bosnian war, for example, 'Most of them do not like hearing themselves described as victims, and preferred to see themselves in positive ways such as being strong, active, fighters, sensible, caring, fair, correct, and persistent' (2014: 124).

*Victims during the Homeland War on the Territory of the Republic of Croatia and Optimal Forms of Compensation and Support to Victims.* This report draws heavily upon research by the Department of Sociology of the Faculty of Humanities and Social Sciences in Zagreb between September and November 2013. The research was conducted as part of the UNDP-led project 'Addressing the Needs of Wartime Victims of Sexual Violence in Croatia: An Unresolved Legacy of the 1991-95 War'. The researchers collected 165 cases of sexual violence involving 147 survivors.<sup>8</sup> Of these, 126 were women and 16 were men. In five cases, the person's gender was not stated (UNDP 2013a: 25-26). Using different methods to calculate the total number of survivors, the researchers assessed the range to be between 1,470 and 2,205 or between 1,501 and 2,437 (UNDP 2013a: 35, 64).

Most cases of sexual violence occurred in camps and prisons in Croatia or neighbouring Serbia. According to the UNDP,

Sexual violence in cases of imprisonment, in camps outside of the Republic of Croatia or in prisons within the Republic of Croatia, was characterized, as a rule, by repeated, multiple cases of rape, and victims state that rape was performed against a higher number of persons...This pattern is closest to the pattern that can be seen in cases of using sexual violence as a method of torture and/or weapon of war, such as those recorded in Bosnia and Herzegovina or Rwanda. As a rule, sexual violence within this pattern is relatively public, whether taking place in separate rooms with the presence of other victims, or completely publicly, in front of all prisoners (2013a: 30).

While women were primarily targeted, some men were also subjected to sexual violence, most commonly in the form of genital beatings<sup>9</sup> which sometimes resulted in permanent injuries. In addition, some men were made to engage in sexual acts with other prisoners. In their research with 60 survivors of sexual violence in Croatia, Lončar, Henigsberg and Hrabar found that '...prisoners were

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<sup>8</sup> There are 147 known survivors of wartime sexual violence in Croatia (UNDP 2013a: 35).

<sup>9</sup> The UNDP report notes that according to research by the Medical Centre for Human Rights in Zagreb, 78 of the 1,648 men surveyed (approximately 4.7 per cent) disclosed that they had endured some form of sexual violence during the war. Around half of them had suffered genital beatings (2013a: 36). On the issue of blunt trauma to the male genitals inflicted in conflict, see Carlson (2006).

often forced to perform fellatio on one another' (2010: 196).<sup>10</sup> Women, on the other hand, 'were typically subjected to rape' (UNDP 2013a: 30).

Until now, survivors of war-related sexual violence in Croatia have been heavily marginalized and have not received the attention that they need and deserve. According to the Minister of Veterans Affairs, 'For the last 24 years, nobody in Croatia cared about victims of wartime sexual violence' (Matić 2015). Their only option in terms of receiving reparations has been to privately sue their perpetrator in a civil court, but this has seldom been possible due to the fact that very few perpetrators have been prosecuted. To date, only 36 cases have been processed in the criminal courts, resulting in 15 verdicts (UNDP 2014). One explanation is that:

A total lack of support by the state institutions, and the society's failure to identify and recognize the suffering of victims of sexual abuse, as well as the social stigmatisation of those victims...result in [a] low crime reporting rate and consequently influence the low dynamics of prosecution of those crimes (Documenta 2013: 2).

The criminal justice process, moreover, has often left survivors feeling deeply dissatisfied. For them, the proceedings are too slow and the sentences too light (UNDP 2013: 59). The Assistant Minister of Veterans' Affairs, moreover, acknowledged that Croatia's criminal justice system has often been 'ham-handed' in dealing with survivors, as in cases where highly insensitive prosecutors have asked the witness questions such as: 'did you do anything to provoke the incident?' (Glavašević 2015).<sup>11</sup>

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<sup>10</sup> If these male survivors have been neglected, this is similarly the case in BiH. While numerous books and articles have been written on the rape of women during the Bosnian war, there is a striking gap with regards to the use of sexual violence against men. During fieldwork in BiH between 2014 and 2015, the author interviewed, inter alia, a Bosnian Serb man near Trebinje who was forced to perform oral sex on a fellow prisoner in the Lora camp in Split in Croatia; and a group of Bosnian Muslim men in the village of Divič, near Zvornik, who were detained in the notorious Čelopek camp. Interviewees in Divič described how the prisoners – in some cases fathers and sons – were required to perform perverse sexual acts on each other as the camp guards watched and laughed.

<sup>11</sup> The Women's Room – Centre for Sexual Rights points out that 'Regarding professions dealing directly with the victims, such as police officers, physicians, psychologists, solicitors etc., there is no higher level education aimed specifically at sexual violence. Any education in this area comes from NGOs, but without structurally planned funding' (2015). During the author's fieldwork in BiH, several interviewees were waiting to testify in local courts against their perpetrators. They expressed a common fear that the defence counsel would ask them inappropriate and provocative questions.

While it is important that perpetrators of wartime sexual violence are brought to justice, and certainly the Republic of Croatia has not done enough in this regard, it is also imperative to recognize the limitations of criminal trials (Clark 2014). They are, in short, a necessary but insufficient response to dealing with the legacy of sexual violence. As Sajjad pertinently underscores,

...rape and sexual violence are attacks on a woman's body and dignity; such assaults have profound psychological, medical, economic, and social ramifications that plague survivors and their families for the rest of their lives. Responses in courts of law are simply inadequate to cope with the trauma inflicted when rape becomes a war crime, a crime against humanity, or an act of genocide (2012: 74).

If the stigma surrounding rape has long 'impeded any open discussion of this issue in Croatia...' (UNDP 2013b), the 2011 publication of the book *Sunčica/Sunny* – a collection of testimonies describing personal experiences of sexual violence from the war – and the subsequent production of a related film significantly contributed to raising public awareness of this issue. Following the publication of the book (Slišković 2011), which contains the stories of 14 women and one man, the UNDP in Croatia and the Office of the President of the Republic of Croatia organized a roundtable on the subject of wartime sexual violence in the town of Vukovar in April 2012. In April 2013, a 15-member Working Group – composed mainly of women – began the process of drafting a new law to give greater rights and protection to wartime survivors of sexual violence. According to the Assistant Minister of Veterans' Affairs, who initially headed this Working Group, 'It needed to be a law written by women, for women' (Glavašević 2015). One year into the drafting process, which took two years, the Croatian Ministry of Veterans' Affairs, with support from the UNDP, organized a conference in Zagreb in May 2014 entitled 'Sexual Violence in Armed Conflict: Delivering Justice for the Past, Preventing Abuse in the Future'. The participants emphasized, inter alia, the need for 'a holistic, integrated and multidisciplinary approach to victims/people who have survived sexual violence' (Croatian Ministry of Veterans' Affairs and UNDP Croatia 2014). Reflecting such an approach, Croatia's new Law on the Rights of Victims of Sexual Violence during the Armed Aggression against the Republic of Croatia in the Homeland War was formally adopted on 17 June 2015.

### *Content of the law*

Embracing an expansive definition of sexual violence as including vaginal, oral or anal penetration with any part of the body or an object, sexual slavery, induced abortion and serious injury resulting in the mutilation in whole or part of a person's sexual organ (Article 2 [1]) (Croatian Ministry of Veterans' Affairs 2015a),<sup>12</sup> the new Law constitutes an important acknowledgement of, and a practical endeavour to address the multiple needs of those who experienced such crimes.<sup>13</sup> Article 15, for example, states that survivors of sexual violence may be entitled to, inter alia, psychosocial support, legal assistance, medical care and rehabilitation, pecuniary compensation and health insurance (Croatian Ministry of Veterans' Affairs 2015a). In post-conflict societies, it is rare that wartime survivors of sexual violence are accorded/able to exercise such essential and fundamental rights. A 2013 report by *Médecins sans frontières*, for example, notes that in many war-torn countries, '...health services for rape survivors are simply not available. Where they exist, lack of awareness, stigmatisation and the inability to reach a health centre are some of the obstacles that prevent victims from receiving care' (2013: 35). In BiH, survivors of wartime sexual violence who have successfully applied for civilian victim of war status in the Federation<sup>14</sup> receive a monthly payment of 560 Bosnian Marks (approximately £204) per month. Too often, however, they are unable to afford the medicines that they need, even when they have health insurance (Amnesty International 2012: 9),<sup>15</sup> and many of

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<sup>12</sup> The Law is currently only available in Croatian. That it does not subscribe to an overly-narrow definition of sexual violence is important in terms of inclusiveness and ensuring that as many survivors as possible are able to benefit from the Law. In contrast, Rubio-Marín highlights the fact that 'Guatemala's national reparations program has been criticized for its under-inclusiveness. It refers to "rape and sexual violence," but the latter is not interpreted to include sexual slavery, forced union with captors, sexual torture, or mutilation of sexual organs' (2012: 84).

<sup>13</sup> Article 3 makes it clear that the Law only applies to survivors of sexual violence committed by military, police and paramilitary forces and not by civilians (unless the latter were forced by the aforementioned groups to commit sexual violence).

<sup>14</sup> In accordance with the 1995 Dayton Peace Accords which ended the Bosnian war, BiH is divided into two entities – the Federation (which has a Bosniak and Bosnian Croat majority) and Republika Srpska (where Bosnian Serbs constitute the majority)

<sup>15</sup> The author, for example, worked closely with a survivor in the impoverished town of Vareš, in central BiH, whose financial position meant that she was 'self-treating' a kidney problem by drinking home-made herbal teas.



them are heavily reliant on tranquilizers, anti-depressants and/or sleeping tablets.<sup>16</sup> During the author's fieldwork in BiH, interviewees frequently described feeling alone and neglected, and they accused the State of abandoning them. It is primarily non-governmental organizations such as *Snaga Žene* (Tuzla), *Viva Žene* (Tuzla), *Medica* (Zenica) and *Žena – Žrtva Rata* (Sarajevo) that are providing crucial assistance and support.

If the new Law in Croatia contains a wide range of provisions to address the health, welfare and legal needs of wartime survivors of sexual violence, it also offers significant financial support. Article 24 states that the beneficiary may be entitled to a one-off compensation payment of 100,000 Croatian kuna (approximately £9,281), or to an increased pecuniary compensation of 150,000 Croatian kuna (approximately £13,921).<sup>17</sup> If this one-off payment can be conceptualized as conferring a material form of recognition,<sup>18</sup> the new Law also provides for monthly compensation payments; Article 26 states that 'The beneficiary can obtain monthly pecuniary compensation amounting to 73% of the budget base...' (currently 2,427 Croatian kuna or approximately £226) (Croatian Ministry of Veterans' Affairs 2015a). The payments will commence from January 2016. While monthly payments can help to address survivors' everyday financial needs, they are not unproblematic. During the author's research in BiH, for example, some interviewees living in the Federation disclosed that although the money that they receive each month as civilian victims of war is helpful and very much-needed, it is also a painful reminder of what they went through during the war and of why they are entitled to these payments. According to Danieli, however, monthly payments can be viewed in a more positive light. In his words, 'The monthly cheque in some ways weakens the trauma. When it

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<sup>16</sup> All of the men and women interviewed by this author during her fieldwork in BiH were taking some sort of medication, most commonly Lexaurin, Seroxat or Eglonyl, to help them get through the day. Psychologists and psychiatrists too often prescribe such medications without addressing the reasons why the patient is anxious, unable to sleep, etc.

<sup>17</sup> This higher figure will be available to those survivors who, for example, suffered severe disabilities due to the sexual violence committed against them or who became pregnant as a result of being raped.

<sup>18</sup> According to De Grief, reparations – of which compensation is one element – '...are, in a sense, the material form of the recognition *owed* to fellow citizens whose fundamental rights have been violated' (2007: 162).

becomes routine, it transforms into something permanent that somehow enables overcoming survivor guilt. The routine swallows the guilt' (2007: 315).

In Croatia, the views of survivors themselves on this issue have been somewhat mixed. The UNDP notes that:

Some victims feel shame, because they perceive the receiving of money as compensation for the suffered trauma; however, they still need the money, and shall therefore use their rights. These victims speak more directly about financial restitution in the form of receiving a fixed monthly pension, similar to the pensions received by war veterans. Other victims emphasize the symbolical dimension to a higher extent, entailed in the provision of funds, because it is a material equivalent of the recognition of the status of a civilian victim, which they believe is strongly needed (2013a: 58).

Consistent with the fact that it is notoriously difficult to secure any consensus that 'justice' has been done, it is unsurprising that survivors have expressed diverse views with regards to compensation. The key point, however, is that it is something that *they* feel is necessary and important (UNDP 2013a: 58).

Central to the effective implementation of the new Law will be the Commission for the Victims of Sexual Violence. Article 10 (2) of the Law provides that this Commission will consist of seven members, each of which will have a deputy. The members of the Commission will include at least one lawyer, one psychologist, a medical doctor specialized in psychiatry and a second medical doctor with another area of specialism (Article 12 [2]). They should be Croatian citizens and have some relevant experience, such as working with war victims in general or survivors of sexual violence (Article 12 [3] [4]). Those interested in being part of this Commission will be invited to apply for a four-year term (Article 11 [1]). If the public call is unsuccessful,<sup>19</sup> the Minister of Veterans' Affairs will appoint the members and their deputies (Article 11 [4]). Survivors will complete an application providing as much information as possible about what happened to them during the war (Article 28 [3]). The

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<sup>19</sup> On 31 August 2015, the Croatian Ministry of Veterans' Affairs issued a public call relating to the Commission.

members of the Commission will subsequently examine the information submitted and decide whether the applicant is entitled to the benefits provided under the new Law. Article 29 states that an individual applying under the Law shall directly participate in the procedure and shall be heard in a way that is least traumatic for him/her, consistent with the principles of gender sensitivity (Croatian Ministry of Veterans' Affairs 2015a).

## **Assessing the new law**

### ***Strengths and merits***

It is important to underline that as the new Law was only adopted this year, it remains to be seen how it will operate in practice and whether it will deliver all that it promises. An early analysis of the Law's main strengths and weaknesses, however, is highly appropriate, and indeed it may help to facilitate the smooth implementation of the Law over the coming months. This article submits that the Law is to be praised on four main grounds. The first is consultation with and empowerment of survivors. In post-conflict societies, there is a frequent gap between, on one hand, the notion that transitional justice processes give a voice to victims/survivors and, on the other hand, the on-the-ground reality that the latter may experience these processes as disempowering. Ortega, for example, points out that '...the gender perspective adopted in recent truth commissions promotes a particular aspect of women's experiences of conflict: their victimization' (2010: 3); and Mutua, underscoring the fact that international courts are often deeply disconnected from the local communities that they claim to benefit,<sup>20</sup> describes the International Criminal Tribunal for Rwanda (ICTR) as having 'orbited in space, suspended from political reality and removed from both the individual and the national psyches of the victims as well as the victors in the Rwanda conflict' (2015: 6). Hence, just as some scholars have called for more 'victim-centred transitional justice' (see, for example, Robins 2011, 2012), such calls have similarly found their way into policy documents. The Guidance Note of

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<sup>20</sup> For a critique of the International Criminal Tribunal for the former Yugoslavia (ICTY) on this particular issue, see Clark (2014).

the UN Secretary General on Reparations for Conflict-Related Sexual Violence,<sup>21</sup> for example, states that:

The process of obtaining reparations should itself be empowering and transformative. For example, the UN's approach to supporting the mapping, design, implementation, monitoring and evaluation of reparations should be victim-centred, so that victims of sexual violence are able to assume a proactive role in obtaining reparations. This has the potential of unsettling patriarchal and sexual hierarchies and customs which need to be anticipated and managed as part of the reparations process (UN 2014: 9).

The 2007 Nairobi Declaration on Women's and Girl's Rights to a Remedy and Reparation uses similar language. Premised on the conviction that victims/survivors should themselves design and direct reparations programmes (International Federation for Human Rights 2007), it states, *inter alia*, that 'decision-making about reparation must include victims as full participants...' (Nairobi Declaration 2007: section 2, A), adding that this participation 'should be guaranteed in every stage of the reparation process, i.e. design, implementation, evaluation, and decision-making' (Nairobi Declaration 2007: section 2, B).

In the context of the drafting of the new Law in Croatia, some consultation with survivors did take place. As part of the UNDP's aforementioned project 'Addressing the Needs of Wartime Victims of Sexual Violence in Croatia', six women were interviewed in Vukovar and Eastern Slavonia, and the psychologist-psychotherapist Marijana Senjak – with whom the UNDP worked closely – interviewed a further four survivors (UNDP 2013a: 53). In other words, 6.8 per cent of the total known number of survivors (147) were consulted. While this is a small percentage and ideally more survivors would have been included in the process, it is important that those whose views were sought were consulted on a wide range of issues, from the procedure of making an application under the new Law (UNDP 2013a: 55) to the desirability of different compensation models (UNDP 2013a: 57-58) and the importance of rehabilitation programmes and what these should cover (UNDP 2013a: 59). During

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<sup>21</sup> According to the Summary, 'This Note aims to provide policy and operational guidance for United Nations engagement in the area of reparations for victims of conflict-related sexual violence. It is intended to complement other relevant UN tools and Guidance Notes' (UN 2014: 2).

these consultations, for example, it emerged that ‘The victims consider rehabilitation programmes in the form of legal, medical and psychological assistance very much needed’ (UNDP 2013a: 59). They also believed that such programme would encourage those survivors who have chosen to remain silent – due to fear, a sense of shame, a desire to forget – to finally come forward and report the crimes committed against them during the war (UNDP 2013a: 59).

A second important strength of the new Law is its sensitivity towards survivors. The process of testifying in a courtroom can be deeply traumatic for individuals who have experienced sexual violence. During fieldwork in BiH, the author attended a trial in Sarajevo in which a defendant brusquely cross-examined for over 20 minutes the woman he stood accused of raping; and an interviewee who testified at the International Criminal Tribunal for the former Yugoslavia (ICTY) described how, after her rapist was granted early release, he called her and threatened to repeat what he did to her in 1992 (Interviewee M 2015). In the United Kingdom, a case that made news headlines was the tragic death of Frances Andrade, who committed suicide in 2013 just days after testifying against her former music teacher, whom she had accused of indecent sexual assault (he was ultimately found guilty). Three days before taking her own life, 49-year-old Andrade texted a friend and said that the defence lawyer’s cross-examination had made her feel as though she had been ‘raped all over again’ (Gentleman 2013).

While it is yet to be seen how Croatia's new Law will work in practice, it is encouraging that it contains measures to avoid/minimize the re-traumatization of survivors. In terms of the information that the latter will need to provide, for example, the UNDP's consultations with relevant experts in the field revealed a clear preference for 'individual collection of victim statements, performed by educated experts (psychologists, social workers, etc.) who are acquainted with the context of war events in the territory where the violence against the victim took place' (UNDP 2013a: 44). These experts adjudged that 'such an approach would prove to be extraordinarily facilitating to victims, and might provide an incentive for some victims to establish contact for the first time...' (UNDP 2013a: 44). A feminist

human rights activist who was part of the Working Group particularly praised Article 29 of the new Law, paragraph 2 of which states that a survivor does not need to be heard or questioned if s/he has a court judgement against the perpetrator, has previously given a statement to competent authorities (for example, a prosecutor) or has already provided direct evidence of sexual violence. She opined that Article 29 thus displays a deep sensitivity towards survivors, by protecting them from the potential trauma of having to re-tell their stories (Pamuković 2015).

A third merit of the new Law is its recognition of the important fact that sexual violence is a ricochet crime which affects whole families.<sup>22</sup> Article 17(1) accordingly states that both the beneficiary and his/her family members are entitled to psychosocial assistance related to the consequences of sexual violence. An explanation of Article 17 attached to the final draft of the Law underscores that the selective provision of assistance to the direct victim only is inadequate; the latter's recovery and re-socialization do not occur in isolation but in a wider social context, of which the family is a fundamental part (Croatian Ministry of Veterans' Affairs 2015b). Not only does the new Law thus implicitly acknowledge – consistent with ecological approaches to trauma recovery<sup>23</sup> – that both personal and contextual factors shape individual responses to trauma (Moos and Holahan 2003). It is also in keeping with the aforementioned UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, which state that:

Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization (UN 2005: Article 8).

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<sup>22</sup> During fieldwork in BiH, for example, the author interviewed a young woman who was raped multiple times during the Bosnian war. This woman, who was just 15 years old when the crimes took place, emotionally disclosed her fears that her frequent mood swings and bouts of depression are negatively affecting her two sons (Interviewee E 2015).

<sup>23</sup> One of the leading authorities on ecological approaches, Harvey underlines that ‘...both vulnerability to victimization and individually varied response and recovery patterns are multi-determined by interactions among three sets of mutually influential factors: those describing the *person’s* involved and their relationships to one another; those describing the *events* experienced; and those describing the larger *environment*’ (1996: 5).

A final strength of the new Law is that it both acknowledges, and makes some attempt to address, the problem of stigma which so often surrounds sexual violence.<sup>24</sup> During the author's fieldwork in BiH, several interviewees talked about being verbally abused by their husbands – the term *whore* (*kurva*) was most frequently used – and/or having problems with members of their local community. An interviewee in east Sarajevo, for example, recounted how, after going to visit a local psychologist, two women in the street (friends of the psychologist) pointed to her as a 'raped woman' (Interview S 2015). In Vukovar, where the majority of the rapes committed in Croatia occurred, the UNDP notes that:

...the prevailing attitude towards victims is extremely stigmatizing, and includes direct condemnation (1) by family members of the victim (*"why have you exposed us to shame; why do you persist on criminal prosecution of perpetrators, when you see that nothing has changed for years; how long is this going to go on; you're not home because of all that stuff, what's the point; when will all this end (...)"*); but also (2) by the wider community (which uses disparaging terms when referring to them, such as "Vukovar whores" or "ladies with red bags") (2013a: 59).

The Explanation attached to the final draft of the Law makes it clear that those behind this new legislation wanted to address the problem of stigma. The document states that the provision of psychological assistance to those members of society (and their families) who are stigmatized as the 'raped ones' will 'strengthen their sense of belonging, of being taken care of by the community and, finally, restore faith in the system' (Croatian Ministry of Veterans' Affairs 2015b). While this is perhaps overly-optimistic, any active attempt to tackle the problem of stigma is to be welcomed. It should also be noted that the survivors interviewed as part of the UNDP's project themselves believed that the recognition of their personal sacrifice during the war would positively impact upon the prevalence of social stigma (UNDP 2013a: 59).

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<sup>24</sup> According to Waller, 'Our need to believe in a just world can and often does overwhelm our recognition that bad things can happen to good people. As a result, we often assume that victims deserve, and can be blamed, for their fates' (2012: 91).

To summarize, the principal merits of the new Law are that it reflects a certain level of consultation with survivors; it can be described in important ways as ‘survivor sensitive’; it aims to address the needs of both survivors and their families; and it actively seeks to tackle the problem of social stigma. However, there are also parts of the Law that raise concern and these need to be taken seriously.

### ***Weaknesses and potential problems***

While it must be reiterated that this is a very early analysis, there are three main issues with the new Law in Croatia which should be flagged up at this stage. The first of these relates to the Law's definition of sexual violence as occurring against a person ‘without her/his consent or by force or threat’ (Article 2 [2]) (Croatian Ministry of Veterans' Affairs 2015a). It is submitted that the reference to lack of consent could potentially deter some survivors from applying under the Law. As a human rights activist explained, if survivors simply ‘froze’ (Schmidt, Richley and Zvolensky 2008) and remained silent, rather than demonstrably expressing non-consent to the acts of sexual violence committed against them, they may worry about meeting the necessary criteria to qualify under the new Law (Pamuković 2015).

The very fact that the Law refers to non-consent, moreover, is somewhat anomalous. In the Kunarac, Kovač and Vuković trial at the ICTY, for example, the Appeals Chamber underlined that ‘...the circumstances ...that prevail in most [sexual violence] cases charged as either war crimes or crimes against humanity will be almost universally coercive’, meaning that ‘...true consent will not be possible’ (ICTY 2002: para. 130). The ICTR Appeals Chamber in the Gacumbitsi case similarly adjudged that coercive circumstances negate the possibility of meaningful consent (ICTR 2006: para. 155). If, as Schomburg and Peterson argue, ‘the law may presume nonconsent where sexual contact is likely to involve physical force or occurs under circumstances that are inherently coercive’ (2007: 138), what is the rationale for including non-consent in the new Law? According to the UNDP, it is anticipated that the number of survivors applying under the Law will be relatively low, particularly as the war ended 20 years ago (2013a: 45). It is important, therefore, that the Law does not discourage



potential applicants from coming forward; and one of the problems with a definition of sexual violence that includes non-consent is the fact that it ‘unnecessarily points to the behavior of the victim...’ (Schomberg and Peterson 2007: 140).

A second issue with the Law is that it is far from clear how the Expert Commission – the crucial body in terms of the Law’s operationalization – will actually decide whether an individual applicant has met the necessary criteria. Article 13 (2) of the Law states that:

The Commission shall give its opinion whether the party is a victim of sexual violence on the basis of medical and other documentation, taking into account:

- the facts and evidence that are identified in criminal proceedings,
- the final court judgement in proceedings relating to the acts of sexual violence in the Homeland War,
- other evidence (Croatian Ministry of Veterans’ Affairs 2015a).

As the head of Documenta pointed out, however, not all survivors of wartime sexual violence have medical evidence (Teršelić 2015). The aforementioned fact that so few perpetrators have been prosecuted, moreover, means that most survivors are unlikely to have legal documentation. The Minister of Veterans’ Affairs himself acknowledged that ‘The Commission will not have an easy job, but if we wait for court verdicts we will be waiting a very long time’ (Matić 2015). Major questions thus remain concerning the evidence that survivors will both *need* to provide and be *able* to provide.<sup>25</sup> Additionally, important questions remain regarding the actual procedure that the Commission will follow.<sup>26</sup> Survivors seeking to realize their rights under the new Law will be invited to appear before the Commission, the members of which will ask various questions based on the evidence submitted. While the specific questions asked and the length of the process will vary from case to case, the Deputy Minister of Veterans’ Affairs stressed that she wanted the procedure to be ‘friendly’ rather than bureaucratic (Nađ 2015). For his part, the Assistant Minister underscored that he does not want

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<sup>25</sup> Deputy Minister Nađ did, however, confirm that the Commission will accept documentation from the recent Women’s Court that took place in Sarajevo in May 2015 (Clark 2016). Among the 36 women from across the former Yugoslavia who testified at the Women’s Court was a Serb witness from Croatia. She told the story of how she and her husband were abducted by four Croatian soldiers in 1991, one of whom raped her.

<sup>26</sup> A by-law addressing this issue is still to be written.

survivors to feel as though they are being cross-examined (Glavašević 2015). He thus echoed the concerns of experts consulted on the new Law, who were in agreement that a strict legal procedure requiring a victim to defend his/her statement ‘would represent a traumatic experience...and raise the possibility of repeated traumatization’ – and should accordingly be avoided at all costs (UNDP 2013a: 57).<sup>27</sup> Exploring how survivors experience the process will thus be an important topic for further research once the Commission has commenced its work. The latter is expected to hear its first cases towards the end of 2015.

The third major issue with the new Law is that while Article 5 states that ‘the principles of gender equity and equality, without discrimination of parties on any grounds, shall be applied’ (Croatian Ministry of Veterans’ Affairs 2015a), the position of Serb survivors under the Law remains ambiguous. This is for two reasons. Firstly, the title of the Law is extremely problematic. Rather than placing the emphasis on survivors and their rights, the words ‘during the armed aggression against the Republic of Croatia in the Homeland War’ help to reinforce an ethno-nationalist sense of ‘us’ and ‘them’. It is interesting to note that in the final draft of the Law, the title was simply the Law on the Rights of Victims of Sexual Violence in the Homeland War. Regrettably, however, pressure from right-wing parties in the Croatian parliament (Sabor) meant that the title was ultimately changed at the last minute to the Law on the Rights of Victims of Sexual Violence during the Armed Aggression against the Republic of Croatia in the Homeland War (Pamuković 2015).<sup>28</sup> Such a heavily-politicized title appears to imply that this is a law for Croat victims of Serb-perpetrated sexual violence. The danger is that the Law’s very name will thus dissuade Serb survivors from seeking to realize their rights. A Serb interviewee in Zagreb, for example, disclosed that although she intends to submit an application under the new Law, she is concerned about possible discrimination. It would be another

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<sup>27</sup> Survivors have similarly underscored that they should not be required to defend their written statements (UNDP 2013a: 55).

<sup>28</sup> Marijana Senjak stressed that the addition of the word ‘aggression’ is entirely superfluous (2015). The 1990 Declaration on the Homeland War, to which Article 1 of the new Law refers, ‘confirms’, *inter alia*, that Serbia, Montenegro and the JNA, with assistance from Serb rebel forces in Croatia, carried out ‘armed aggression’ against the Republic of Croatia (Croatian Sabor 1990).

form of degradation, she underlined, if her ethnicity were to prevent her from actualizing her rights as a rape survivor (Interviewee JO 2015).

Secondly, in stipulating the conditions that beneficiaries under the Law must fulfil, Article 14 states:

...the party was not a member, assistant or collaborator of enemy military and paramilitary forces or convicted for her/his involvement in the armed and paramilitary forces or for threatening the constitutional order and security of the Republic of Croatia (Croatian Ministry of Veterans' Affairs 2015a).

The head of Documenta expressed deep concern about this part of the Law and criticized the wording of Article 14 as being extremely vague (Teršelić 2015). What is clear is that Serb soldiers who suffered sexual violence during the war in Croatia will not be able to benefit from the new Law.<sup>29</sup> The Explanation attached to the final draft explicitly states with respect to Article 14 that '...all members of hostile military and paramilitary forces are excluded from realisation of the rights laid down by this Law' (Croatian Ministry of Veterans' Affairs 2015b). According to the Assistant Minister of Veterans' Affairs, this was a difficult decision to make, but it was felt that it would be inappropriate for potential perpetrators to be included in the same law as their victims (Glavašević 2015). This is not a particularly convincing justification as it seems to assume that any Serb soldiers who suffered sexual violence were, simply by virtue of their ethnicity, also possible perpetrators.

What is still uncertain is whether Article 14 will restrict Serb civilian survivors of sexual violence in Croatia from successfully applying under the new Law. While there is a critical lack of data in terms of the number of Serb survivors, the UNDP has estimated that during Operations Flash (*Bijesak*) and Storm (*Oluja*) alone,<sup>30</sup> between 95 and 140 individuals suffered sexual violence (2013a: 39). A

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<sup>29</sup> The author has been unable to find any information with respect to the number of Serb soldiers who suffered sexual violence during the war in Croatia. According to Oosterhoff, Zwanikken and Ketting, 'The occurrence of sexual torture of men during wartime and in conflict situations remain something of an open secret, although it happens regularly and often takes place in public' (2004: 75).

<sup>30</sup> These were military operations conducted by the Croatian Army during the summer of 1995 which resulted in the forced displacement of some 200,000 Serbs from the Krajina area of Croatia.

psychologist-psychotherapist who was involved in the Working Group that drafted the new Law stressed that the purpose behind Article 14 is not to discriminate against Serb survivors. She explained that when the draft of the new Law went before the Parliamentary Committee, right-wing parties – notably the Croatian Democratic Union (HDZ) – wanted Serbs to be excluded from the Law, maintaining that if any Serbs were raped, these were just isolated incidents. The HDZ had to be given something, the interviewee stressed, and Article 14 was the political carrot that the right-wing wanted. It was, in her words, a ‘necessary political trade-off’ (Senjak 2015). Another member of the Working Group, however, was far more ambiguous about whether Serb survivors will be able to use the new Law. When asked directly, she repeatedly maintained that a critical distinction must be made between, on one hand, rapes committed by drunkards and petty criminals and, on the other hand, rapes committed as part of a war strategy (Slišković 2015).

Some Croatian survivors themselves are of the opinion that Serbs should not be eligible to apply under the new Law. The UNDP notes that:

...some victims oppose the granting of status and rights to Serbian civilian victims, providing an argument that this amounts to the equalization of the aggressor and the victim.<sup>31</sup> According to this point of view of victims, Serbian civilian victims who suffered rape / sexual abuse on the territory of Croatia should not be allowed to receive the status of civilian victims of rape/sexual abuse, and hence should not be granted the rights (2013a: 55).

The dominant meta-narrative of the ‘Homeland War’ has fundamentally contributed to the marginalization of Serb suffering in Croatia (see Clark 2013b). Accordingly, the number of Serb survivors of sexual violence applying under the new Law is likely to be low. The key point, however, is that they should not be prevented or excluded from doing so. Any law that is truly survivor-centred should treat all survivors equally. Highlighting this point, Article 25 of the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation states that: ‘The application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and

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<sup>31</sup> A male survivor and war veteran, for example, opined that the new Law is important because it confirms that Serbia was the aggressor (Interviewee N 2015).

international humanitarian law and be without any discrimination of any kind or on any ground, without exception' (UN 2005). The Nairobi Declaration on Women's and Girl's Rights to a Remedy and Reparation similarly underscores the principle of non-discrimination (2007: section 1, A).

### **Some final reflections**

Survivors of sexual violence are seldom a priority in post-conflict societies. States recovering from years of bloodshed and instability may not only lack the necessary resources and infrastructure (Ward and Marsh 2006: 11), but also the requisite political will to address the needs of those who suffered conflict-related sexual violence. One of the reasons for the continued impunity surrounding acts of violence committed during Peru's 20-year civil war (1980-2000), for example, is 'the political-military influence exerted over the judiciary' (Boesten and Fisher 2012: 7). The fact that it is external donors who typically set the post-war reconstruction agenda further contributes to a frequent disconnect between the projects being undertaken and on-the-ground needs (Lind 2015: 2). It is precisely because survivors of wartime sexual violence are frequently marginalized and neglected that Croatia's new Law on this issue is so important. This article has offered an early analysis of the Law, highlighting its major strengths but also some of its more problematic elements. Ultimately, however, the key to the Law's success or failure will be its implementation.

How will the new Law operate in practice? How many survivors will utilize the new Law? Will they have sufficient evidence to satisfy the Commission? Will they feel as though they are being cross-examined? Will Serb survivors (civilians) be able to successfully claim under the Law? Will they be deterred from applying? Will the Law deliver all that it promises? These are just some of the key questions that remain to be answered, thereby highlighting the need for vital follow-up studies on the Law's implementation. Such research, however, will necessarily involve significant challenges. Three in particular can be highlighted. Firstly, as this is a new law which will not be fully executed overnight, any analysis of its implementation must address critical temporal issues. Specifically, at what point should we commence this analysis? How can we avoid engaging in an overly-premature

assessment that may yield only limited data? Secondly, in view of the fact that the seven-member Commission will play a crucial part in the Law's implementation, the Commission's work should be a central focus of any comprehensive analysis of the Law. The proceedings of the Commission, however, will be held in private to protect survivors. In other words, there will always be gaps – an inevitable part of doing research on highly sensitive topics – between what is desirable and what is actually feasible in practice. Thirdly, the views of survivors themselves are essential for the purpose of evaluating how successfully the Law has been implemented. Finding survivors willing to speak, however, is immensely challenging. What quickly emerged during the author's fieldwork in BiH, for example, is that there are common factors among survivors – including fear, a sense of shame, a general interview fatigue and a mistrust of internationals – which have made many of them increasingly reluctant to talk.

To address these challenges, this article proposes a threefold approach for analyzing the Law's implementation. As the first prong of this approach, the aforementioned temporal challenges highlight the importance of longitudinal research on the Law. By employing a longitudinal approach and monitoring the Law's implementation at regular (for example, yearly) intervals, 'Temporality is explicitly addressed in the research process, making change over time a central domain of analytic focus' (McMichael et al. 2015: 252). The use of a longitudinal approach will be particularly useful for exploring whether and how the Commission's procedures evolve and develop over time. Moving to the second prong of the suggested threefold approach, research on the Law's implementation should include both top-down and bottom-up analysis. If, methodologically, this means speaking to a broad range of actors involved in the Law, from officials within the Ministry of Veterans' Affairs and members of the Commission to survivors and representatives of NGOs that work with survivors, it also means exploring and conceptualizing policy dynamics. According to Sabatier, a standard top-down approach 'starts from a policy decision and focuses on the extent to which its objectives are attained over time and why' (1986: 32). While this is a crucial part of assessing the Law's

implementation, Manji, contrasts these top-down approaches with critical analyses. The latter, she explains:

...question the implicit assumption of the policy makers and drafters that they can control the process of implementation by their detailed direction. As a number of implementation studies have shown... it is difficult to predict outcomes when the rational and informed efforts of legislators meet with resistance and non-compliance on the ground...or when economic circumstances make implementation impossible (2001: 331).

Such 'critical analysis' can be usefully employed as part of a bottom-up analysis of the Law's implementation. A Bosnian Croat interviewee, for example, explained that even though she was raped in BiH rather than in Croatia, she has never been able to claim any rights in BiH as she now lives in Zagreb. She is therefore planning to apply under the new Croatian Law and insisted that if she is not successful, she will take her story to the media (Interviewee JA 2015). The implementation of the Law will certainly provoke a host of reactions on the ground. How, for example, will right-wing politicians and hard-line war veterans react if Serb survivors successfully apply under the new Law? Conversely, how will human rights activists react if Serb survivors struggle to realize their rights under the Law? And how will Croat and Serb survivors respond if budgetary factors become an issue and conscribe the Law's practical application? In other words, such bottom-up developments and their impact should form a significant part of any analysis of the Law's implementation.

Turning finally to the third part of the threefold approach which this article proposes, the Croatian Ministry of Veterans' Affairs is in the process of building four Veterans' Centres in the coastal towns of Sinj and Šibenik and the interior towns of Petrinja and Daruvar. The aim of this 20-year project, which is being funded by the European Fund for Regional Development, is to raise the quality of life and facilitate the social reintegration of various war-affected groups, including veterans, civilian victims and survivors of sexual violence. The Ministry of Veterans' Affairs anticipates that at least 42,000 individuals will use the four Centres which will offer, inter alia, psychosocial programmes, skills training, occupational therapy, medical treatment and opportunities to work within the local

community (Croatian Ministry of Veterans' Affairs 2015c).<sup>32</sup> According to Article 23 of the new Law, survivors of wartime sexual violence have a right to utilize these Veterans' Centres. A very practical way in which to study the Law's implementation, thus, will be to follow developments within the Veterans' Centres once they open in 2016. It will be important, for example, to look at how many survivors use the Centres, how satisfied they are with the services available and how successful the Centres are at accommodating the needs of diverse war-affected groups.

What is essential at this stage is that the new Law is widely publicized, so that as many survivors as possible are made aware of their rights and how to achieve them. These information campaigns should also be used as an opportunity for much-needed public discussion on the issue of wartime sexual violence. While the needs of survivors should be the central focus, the wider context should also be addressed, not least 'the social norms and attitudes that have fostered SRV [sexual and reproductive violence] or made it socially acceptable to deny SRV's existence' (Duggan, Paz y Paz Bailey and Guillerot 2008: 212).

While writing the final part of this article, the author received an email from J, a woman whom she met in Zagreb in June 2015. J was raped in 1992. As the perpetrator was her own husband, however (i.e. a case of civilian rather than military rape), J will not be able to benefit from the new Law. Nevertheless, she fully supports this legislation and views it as a major step forward. In her email, she wrote:

*I meni je drago da smo se upoznale i da netko piše o nama i našim patnjama jer ženama treba netko tko će, kao ti, sa empatijom i bez vlastite koristi, imati snage napisati što nam se dogodilo kad same ne budemo mogle pronaći prave riječi (And I am glad that we met and that somebody is writing about us and our suffering because women need somebody who, like you, with empathy and without any personal use, will have the strength to write about what happened to us when we ourselves cannot find the right words) (email correspondence, 24 June 2015).*

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<sup>32</sup> The Deputy Minister of Veterans' Affairs, for example, explained that individuals who attend the Veterans' Centre in Petrinja will have an opportunity to work with a group of local veterans who make furniture. Additionally, the area lends itself to activities such as bee-keeping and mushroom foraging (Nađ 2015).



Not only is the new Law an extremely important piece of legislation in its own right, but it is hoped that it will give more women (and men) an opportunity to tell their stories and to be heard, thus bringing them in from the margins.

### **Acknowledgements**

I would like to thank the Leverhulme Trust for enabling me to conduct this research. I would also like to thank all of the interviewees in Zagreb who generously gave up their time to speak to me about the new Law.

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